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July 20, 2007

David Riggs
Riggs Abney Neal Turpen Orbison & Lewis
502 West 6th Street
Tulsa, Oklahoma 74119-1010

Re: *State of Oklahoma v. Tyson Foods, Inc., et al.*,
Case No. 05-CV-0329 GKF-SAJ
In the U.S. District Court, Northern District of Oklahoma
Communications between Plaintiff's Counsel and Kerry Kinyon

Dear David:

A very serious matter came to light in "Plaintiff's Responses to Peterson Farms' Interrogatories and Requests for Production of Documents Served on March 30, 2007." Plaintiff's answer to Interrogatory No. 1 indicates that counsel for Plaintiff have communicated with Kerry Kinyon, former Vice President of Operations for Peterson Farms. Although Mr. Kinyon is no longer employed by Peterson Farms, he served in a number of roles, was an officer of the Corporation, and worked directly with counsel in the defense of this matter.

Mr. Kinyon possesses attorney-client privileged information, which he has not been authorized by the privilege holder to disclose. He was also privy to the mental impressions of counsel, and was the direct liaison between counsel and Peterson Farms at times during his tenure. The fact that Plaintiff's counsel would have ex parte discussions with Mr. Kinyon is disturbing to say the least. Granted, he is no longer an employee or officer of Peterson Farms; however, his status, role, involvement and knowledge of protected information implicate a number of ethical considerations.

My intention is to approach this situation cautiously, and not to reach any premature conclusions about the propriety of any attorney's conduct until I completely understand the situation. Accordingly, I ask that you produce copies of all communications between anyone on the Plaintiffs' team and Mr. Kinyon, and provide me with a written explanation of the circumstances of the communication, identify the parties to the communication, as well as an

July 20, 2007

Page 2 of 2

explanation of the specific matters discussed. Your cooperation may allow this matter to be put to bed rather early; however, if your assistance is not full and forthcoming, I will have no choice but to seek assistance from the appropriate authorities. I look forward to your response.

Best regards

MCDANIEL, HIXON, LONGWELL & ACCORD, PLLC


A. Scott McDaniel

ASM:jlw

cc: Sherry Bartley, Esq.

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Of Counsel
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August 9, 2007

A. Scott McDaniel
McDaniel Hixon Longwell & Acord, PLLC
320 S. Boston Ave., Suite 700
Tulsa, OK 74103

Via U.S. Mail & E-Mail

RE: Oklahoma Poultry Litigation

Dear Scott:

We are in receipt of your July 20, 2007, letter regarding communications by counsel for the State with Mr. Kerry Kinyon. We are well aware of our obligations under the ethical rules, and we fully complied with them.

Although we do not believe we are under obligation to provide it to you, here, without waiver of any privileges or protections, is the information you seek with respect to the communications by counsel for the State with Mr. Kinyon:

Counsel for the State have had both written and telephonic communications with Mr. Kinyon. In connection with these communications we have consulted on multiple occasions with several different independent ethics counsel to ensure that our conduct comported with the highest ethical standards.

Mr. Kinyon first initiated communication with counsel for the State on February 19, 2007, by e-mail. Several written exchanges followed. Copies of written exchanges between counsel for the State and Mr. Kinyon are attached to this letter as Exhibits 1 through 6.

In addition, Mr. Kinyon has spoken by telephone with Donald M. Bingham, an attorney employed by Riggs, Abney, Neal, Turpen, Orbison & Lewis, P.C., on more than one occasion. In these telephone conversations, Mr. Bingham inquired of Mr. Kinyon whether he (Mr. Kinyon) was represented by counsel, if so, the name and telephone number of his counsel, whether Mr. Kinyon would be willing to meet in person to discuss Peterson Farms, whether Mr. Kinyon was assisting counsel for Peterson Farms in the Lawsuit or in any other litigation, and whether Mr. Kinyon was subject to any confidentiality agreement relating to Peterson Farms. Mr. Kinyon responded in the negative to each of these inquiries, except to indicate his willingness to meet with Mr. Bingham and discuss Peterson Farms. Mr. Kinyon stated to Mr. Bingham that he (Mr.



A. Scott McDaniel
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Page 2

Kinyon) was not represented by an attorney but intended to contact a lawyer prior to deciding whether to discuss Peterson Farms with Mr. Bingham. In a subsequent telephone conversation, Mr. Kinyon stated that he had changed his mind and that he would not attempt to retain counsel but would be willing to discuss Peterson Farms with Mr. Bingham. In so doing, Mr. Kinyon expressed to Mr. Bingham a desire not to be identified as an individual having communication with counsel for the State, and when Mr. Bingham advised Mr. Kinyon that his (Mr. Kinyon's) identity would be disclosed in the course of discovery in the Lawsuit and that Mr. Kinyon would be deposed in the Lawsuit, Mr. Kinyon stated that he wanted to reconsider his willingness to discuss Peterson Farms with Mr. Bingham. Mr. Bingham made no attempt to dissuade Mr. Kinyon from reconsidering that decision, and they have not conversed with each other following their final telephone conversation, which took place in late May of 2007. During their final or next-to-last telephone conversation, Mr. Bingham informed Mr. Kinyon that Peterson Farms had submitted to Plaintiffs a discovery request that would require the disclosure of the communications between Mr. Kinyon and Mr. Bingham. Upon learning this, Mr. Kinyon asked when the Peterson Farms discovery request had been received and when the discovery request would be answered by the State (i.e., on what date Peterson Farms would learn that he had communicated with Mr. Bingham). Mr. Bingham told him in their final telephone conversation that the response to the Peterson Farms discovery request was due on or about May 25, 2007. Mr. Kinyon made no comment concerning the date or the disclosure, except to tell Mr. Bingham again that he wanted to give his decision about talking to Mr. Bingham more thought.

Finally, in either the last or next-to-last telephone conversation with Mr. Bingham, Mr. Kinyon stated that he would send a confidential envelope to counsel for the State, and that the contents of the envelope might cause counsel for the State to follow-up on the information contained in the enclosed material; in the same telephone conversation, Mr. Kinyon stated that if there was follow-up conducted concerning the material enclosed in the confidential envelope, he (Mr. Kinyon) would like to receive fair compensation for the time that he would spend in responding to inquiries and requests that arose during the follow-up. Mr. Kinyon stated that he did not want to receive a large amount of money for his time but did want to receive some compensation if he is called upon to clarify or explain the material provided in the confidential envelope. No such envelope, confidential or otherwise, has been received by Mr. Bingham or, to the best of our knowledge, by any other counsel for the State or by anyone acting on our behalf. No compensation or anything of value has been promised or provided to Mr. Kinyon by Mr. Bingham or, to the best of our knowledge, by any other counsel for the State or by anyone acting on our behalf. Mr. Kinyon did not describe or characterize the contents or information that was to be enclosed in his confidential envelope, and Mr. Bingham did not inquire as to the nature of its contents.

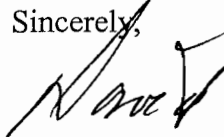
The only substantive comments made by Mr. Kinyon to Mr. Bingham were (a) that he (Mr. Kinyon) was aware of misconduct on the part of Peterson Farms, and (b) that he (Mr. Kinyon) was not sure or did not think that his information about Peterson Farms' misconduct would be relevant to the Lawsuit. Mr. Bingham made no comment in response to these statements, except to tell Mr. Kinyon that he (Mr. Bingham) remained interested in meeting with Mr. Kinyon and discussing Peterson Farms. Mr. Bingham did not inquire further, and no specifics were offered by Mr. Kinyon.

A. Scott McDaniel
August 9, 2007
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Mr. Bingham remains uncertain as to the date of his final telephone conversation with Mr. Kinyon, except that he (Mr. Bingham) believes that it occurred on or after May 22, 2007 and prior to May 25, 2007. Mr. Bingham has not met Mr. Kinyon in person.

As the foregoing demonstrates, the contacts between counsel for the State and Mr. Kinyon have fully complied with all ethical requirements. We trust this letter puts to rest the matter raised in your July 20, 2007 letter.

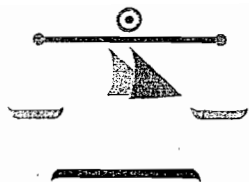
Sincerely,

A handwritten signature in black ink, appearing to read "M. David Riggs", with a stylized flourish at the end.

M. David Riggs
FOR THE FIRM

MDR/jds

Attachments



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August 23, 2007

Via Certified Mail

David Riggs
Riggs Abney Neal Turpen Orbison & Lewis
502 West 6th Street
Tulsa, Oklahoma 74119-1010

Re: ***State of Oklahoma v. Tyson Foods, Inc., et al.,***
Case No. 05-CV-0329 GKF-SAJ
In the U.S. District Court, Northern District of Oklahoma
Follow Up to Communications between Plaintiff's Counsel and
Kerry Kinyon

Dear David:

We received your correspondence of August 9 and the attached documents in response to my request for a full explanation of the communications the Attorney General and his outside counsel had with our client's former Executive, Kerry Kinyon. I do recognize that it appears that Mr. Bingham did make some efforts to ascertain Mr. Kinyon's status prior to having substantive discussions; however, this does not resolve what is a very concerning ethical and legal issue. As I previously explained to you Mr. Kinyon has served as a client representative, and at times, the primary liaison between Peterson Farms' legal counsel and the company. He has held this role in multiple cases of litigation, and was privy to a significant volume of attorney-client privileged information as well as protected attorney work product. Peterson Farms is the holder of these protections from disclosure, and only Peterson Farms can affirmatively waive these protections against disclosure.

Your team has been aware of Mr. Kinyon's involvement in protected matters and communications from the outset of these communications. Mr. Kinyon made his insider status in the litigation clear when he identified himself to Mr. Rice as one of Peterson Farms' representatives at the mediation sessions in this matter. Thus, your attempts to satisfy yourself that you were free to solicit information from Mr. Kinyon without involvement of Peterson's counsel were superficial at best. Mr. Kinyon obviously harbors anger and resentment

August 23, 2007

Page 2 of 2

surrounding his separation from Peterson Farms, and he has made it clear in his communications that he would like to hurt the company in some way. Given his personal agenda and desire to be compensated for his assistance, Peterson Farms' concern that Mr. Kinyon will knowingly and intentionally breach his duty to preserve Peterson Farms' privileges against disclosure of protected documents, communications and mental impressions of counsel is reasonable. Likewise, should any of the plaintiff's legal team or its representatives seek to further communicate with Mr. Kinyon, you will be knowingly inviting the breach of privileges by one who is not authorized to do so. This is very thin ice, which may present the Attorney General and his counsel with very severe repercussions, which we are currently evaluating

Accordingly, I strongly recommend that the plaintiff cease any further informal communications with Mr. Kinyon. You are free to take the deposition of Mr. Kinyon, which will afford Peterson Farms the opportunity to assert its privileges, which you have thus far subverted. I request that you respond by advising me whether plaintiff will follow this recommendation or not at your earliest opportunity.

Best regards

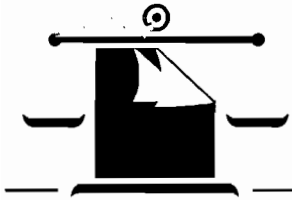
MCDANIEL, HIXON, LONGWELL & ACCORD, PLLC



A. Scott McDaniel

ASM:jlw

cc: Sherry Bartley, Esq.
Mr. Kerry Kinyon (*Via Certified Mail*)
14350 Bethlehem Rd.
Gravette, AR 72736



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September 6, 2007

Via E-Mail

David Riggs
Riggs Abney Neal Turpen Orbison & Lewis
502 West 6th Street
Tulsa, Oklahoma 74119-1010

Re: *State of Oklahoma v. Tyson Foods, Inc., et al.*,
Case No. 05-CV-0329 GKF-SAJ
In the U.S. District Court, Northern District of Oklahoma
**Final Attempt at Resolution Regarding Communications Between
Plaintiff's Counsel and Kerry Kinyon**

Dear David:

You have not responded to my correspondence of August 23rd in which I requested plaintiff's agreement not to communicate further with Mr. Kinyon on an informal basis. I don't wish to assume that your lack of response means that plaintiffs' counsel intend to engage in such communications despite the high risk of disclosure of protected information, so I am writing this last letter to you seeking plaintiffs' agreement on this point. As I have repeated to you, Mr. Kinyon possesses knowledge of highly significant attorney-client communications, attorney work product and attorney mental impressions. He lacks the training and expertise to be able to distinguish between raw factual information and information that is protected by privileges held by Peterson Farms, all of which is exacerbated by his obvious desire to injure his former employer. Thus, the risk of violating Peterson Farms' privileges through your continued communications is great.

I have reviewed the case law on this point, and there are opinions, which clearly highlight that this risk of unauthorized disclosure raises very serious ethical concerns for counsel in your position up to and including disqualification. I will take what ever steps are necessary to protect my client from this happening, and I will not hesitate to seek the intervention of the Court. Plaintiffs can avoid the embarrassment and expense of a motion filed with the Court by simply agreeing to the following:



September 6, 2007

Page 2 of 2

- 1) Specifically describe the substance of the communications between plaintiffs' counsel and Mr. Kinyon to date. Your prior correspondence addressed somewhat the nature of the communications, but you have not stated with any precision what Mr. Kinyon has told plaintiffs' counsel;
- 2) If Mr. Kinyon has provided any documents to plaintiffs', produce them immediately. You are already under an obligation to do so based upon Peterson Farms' prior discovery requests; and
- 3) Do not communicate with or accept any documents from Mr. Kinyon except through formal discovery processes, which provide counsel for Peterson Farms notice and an opportunity to protect its privileges.

I require that you respond to me in writing by no later than the close of business on Monday, September 10 with plaintiffs' answer.

Best regards

MCDANIEL, HIXON, LONGWELL & ACCORD, PLLC



A. Scott McDaniel

ASM:jlw

cc: Sherry Bartley, Esq.

RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS

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September 6, 2007

A. Scott McDaniel
McDaniel Hixon Longwell & Acord, PLLC
320 S. Boston Ave., Suite 700
Tulsa, OK 74103

Via U.S. Mail & E-Mail: smcdaniel@mhla-law.com


Re: Kerry Kinyon

Dear Mr. McDaniel:

We are in receipt of your August 23, 2007, letter. Although we would not have thought it, your unwarranted focus on our conduct regarding Mr. Kinyon now raises a concern on our part that your aim in all this could be to create a situation in which Mr. Kinyon will become so intimidated and worried about violating some "duty" to your client that he will not testify freely and fully about your client's conduct. Would you please give us your assurance that that is not your aim and that you will not now contact Mr. Kinyon directly or indirectly about any testimony he might give, nor comport yourself during any deposition he might give, which would cause him to feel threatened or fearful of giving full and frank testimony regarding your client's non-privileged relevant conduct?

We do intend to take Mr. Kinyon's deposition, and we will seek to have it conducted at the U.S. District Courthouse so that Mr. Kinyon and your client will be afforded all the protections of the Federal Court. We understand that you are sensitive about any testimony Mr. Kinyon might give because of the position he held while employed by your client, but he is a relevant witness to many matters central to the case and under the Federal Rules we are entitled to his full and unfettered testimony.

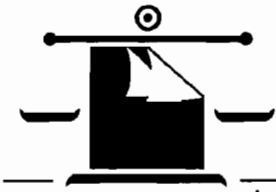
Sincerely,


M. David Riggs
FOR THE FIRM

MDR/jds

EXHIBIT

5



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September 24, 2007

Via E-Mail

David Riggs
Riggs Abney Neal Turpen Orbison & Lewis
502 West 6th Street
Tulsa, Oklahoma 74119-1010

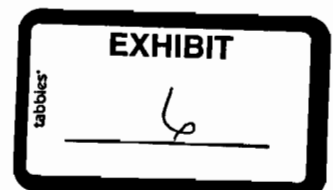
Re: *State of Oklahoma v. Tyson Foods, Inc., et al.*,
Case No. 05-CV-0329 GKF-SAJ
In the U.S. District Court, Northern District of Oklahoma
**Plaintiffs' Continued Refusal to Offer Reasonable Assurances
Regarding Communications With Kerry Kinyon**

Dear David:

Again, you have not responded to my correspondence of August 23rd and September 6. Each time I have asked you to provide me clear answers and assurances that plaintiffs will not act to subvert Peterson Farms' privilege, I receive rhetoric and misdirection rather than a response. In your September 6 letter, you state that plaintiffs do intend to take Mr. Kinyon's deposition, which is fine. However, you completely ducked my request that you state unequivocally that plaintiffs agree to have no further communication, written or verbal, with Mr. Kinyon except through formal discovery processes.

Just so we are clear. I believe you are tap-dancing around a very serious ethical and legal issue. Unless you provide me with written assurance of the following, I intend to file a Motion for Protective Order.

- 1) Specifically describe the substance of the communications between plaintiffs' counsel and Mr. Kinyon to date. Your prior correspondence addressed somewhat the nature of the communications, but you have not stated with any precision what Mr. Kinyon has told plaintiffs' counsel;



September 24, 2007

Page 2 of 2

- 2) If Mr. Kinyon has provided any documents to plaintiffs, produce them immediately. You are already under an obligation to do so based upon Peterson Farms' prior discovery requests; and
- 3) Do not communicate with or accept any documents from Mr. Kinyon except through formal discovery processes, which provide counsel for Peterson Farms notice and an opportunity to protect its privileges.

I require that you respond to me in writing by no later than the close of business on **Wednesday, September 26** with plaintiffs' answer.

Finally, you can rest assured that Peterson Farms' sole intention in this regard is to put an end to plaintiffs' counsels' improper *ex parte* communication with a former executive who possesses knowledge of privileged matters and attorney work product. We are as aware of our ethical obligations as we are our client's rights. Should we deem it necessary to communicate with Mr. Kinyon, we will do so in accordance with all aspects of the Rules of Professional Conduct.

Best regards

McDANIEL, HIXON, LONGWELL & ACCORD, PLLC


A. Scott McDaniel

ASM:jlw

cc: Sherry Bartley, Esq.

Scott McDaniel

From: David Riggs [DRiggs@riggsabney.com]

Sent: Tuesday, September 25, 2007 2:28 PM

To: Scott McDaniel

Scott:

We are in receipt of your September 24, 2007 letter.

There has been nothing improper about the State's contacts with Mr. Kinyon. We are confident that we have acted in all respects and at all times in compliance with the law and the highest ethical standards in connection with the Kerry Kinyon matter, and we will continue to conduct ourselves in such a manner.

The State has disclosed all information about its contacts with Mr. Kinyon to which Defendant Peterson is entitled.

We trust this puts an end to the matter.

M. David Riggs
Riggs, Abney, Neal, Turpen, Orbison & Lewis
502 West Sixth Street
Tulsa, Oklahoma 74119
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Fax: 918-583-1549
driggs@riggsabney.com

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10/8/2007

